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Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, v. MARTIN KAO, Defendant.	Crim. No. 21-00061 LEK UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF SPECIAL ASSESSMENT AND RESTITUTION

UNITED STATES' MOTION FOR ORDER AUTHORIZING APPLICATION OF DEFENDANT'S BOND DEPOSIT TO PAYMENT OF ASSESSMENT AND RESTITUTION

The UNITED STATES OF AMERICA, by and through its attorneys, moves pursuant to 28 U.S.C. § 2044 for an Order authorizing application of Defendant MARTIN KAO's bond deposit to payment of Defendant's special assessment and any restitution ordered by the Court.

BACKGROUND

On September 30, 2020, Defendant was arrested in this matter pursuant to warrant and complaint. ECF Nos. 1, 9. On or about October 8, 2020, Defendant posted a $2,000,000 secured bond, all by way of a cash deposit, which is presently held by the Clerk of the Court. ECF No. 14. On May 6, 2021, the grand jury returned an indictment charging Defendant with three counts of wire fraud, in violation of 18 U.S.C. § 1343, and five counts of money laundering, in violation of 18 U.S.C § 1957. ECF No. 34. On September 7, 2022, Defendant pled guilty to all counts without a plea agreement. Defendant's sentencing hearing is currently set for August 27, 2024.

ARGUMENT

Defendant's $2,000,000.00 cash bond should be applied to Defendant's criminal penalties pursuant to 28 U.S.C. § 2044, which provides in its pertinent part:

> On motion of the United States attorney, the court ***shall*** order any money belonging to and deposited by or on behalf of the defendant with the court for the purposes of a criminal appearance bail bond (trial or appeal) to be held and paid over to the United States attorney to be applied to the payment of any assessment, fine, restitution, or penalty imposed upon the defendant.

28 U.S.C. § 2044 (emphasis added).

Although Federal Rule of Criminal Procedure 46(g) provides for the return of bond monies when the conditions of release have been satisfied, "absent an order from the district court releasing a bond, the bond remains available for purposes of Section 2044." *United States v. Sortini*, 497 Fed. Appx. 738, 739 (9th Cir. 2012) (affirming application of bond monies to restitution); *see also United States v. Tresch*, 626 F. App'x 638 (7th Cir. 2015) (affirming order requiring turnover of money posted as security on appearance bond toward payment of restitution); *cf. United States v. Phu Tan Luong*, 291 Fed. Appx. 73, 75-76 (9th Cir. 2008) (section 2044 turnover not available where district court previously entered order exonerating bond).

Here, the bond has yet not been exonerated. Accordingly, § 2044 requires that the $2,000,000 cash bond be applied to the satisfaction of Defendant's criminal penalties upon Defendant's surrender for service of any term of imprisonment imposed by the Court.

CONCLUSION

Based on the foregoing, the government respectfully requests that the Court enter an order authorizing the Clerk of the Court to apply the $2,000,000 cash bond previously posted by Defendant and presently held by the Clerk to payment of Defendant's criminal penalties, including his Special Assessment and any order of restitution.

DATED: August 5, 2024, at Honolulu, Hawaii.

CLARE E. CONNORS
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By */s/ Craig S. Nolan*
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CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, a true and correct copy of the foregoing was served on the following counsel of record using the Court's CM/ECF electronic filing system:

Victor J. Bakke, Esq.
Attorney for Defendant Marin Kao

DATED: August 5, 2024, at Honolulu, Hawaii.

/s/ Craig S. Nolan
Craig S. Nolan
U.S. Attorney's Office